Public Prosecutor v Kon Chiang Fatt

HIGH COURT (KUCHING) — CRIMINAL APPEAL NO 42–04 OF 2002
RICHARD MALANJUM J
20 OCTOBER 2002

Criminal Law *— Emergency (Essential Powers) Ordinance — s 2 — Appeal against acquittal — Respondent charged with corrupt practices — Procedural requirement in making purchases of goods — Whether there was missing link in evidence — Whether trial court in doubt on the factual evidence adduced by the prosecution*

The respondent was a public officer and at the material time he was the Acting Principal Assistant Director in the Human Resources Management Division of the Chief Minister's Office, Kuching, Sarawak ('the Department'). He was charged with five counts of corrupt practice by using his public office for his advantage when he issued local purchase orders ('LPO') to a firm wholly owned by his daughter for the supply of computer accessories to the Department. At the end of the prosecution case, the learned sessions court judge called for the defence of the respondent on those charges. Having heard the respondent, he was discharged and acquitted. The prosecution appealed to the High Court. The gist of the prosecution's case was that in issuing the respective LPO for the items mentioned in the charges the respondent was in conflict of interests situation in that he had abused his position and thus committed distinct offences under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('the Ordinance').

Held, dismissing the appeal:

(1) As regards the signing of the LPO there was no evidence adduced indicating that notwithstanding the signing was after the delivery of the goods purchased, it was nevertheless an offence under the Ordinance. And it was in evidence that the respondent only signed the LPO after the Department received all or at least some of them, of the items ordered. Hence, it was quite justified for the trial sessions court judge to say that it was possible that the decision to purchase the goods could have been made by some other person or persons and not necessarily the respondent. As such on the facts of this case, the signing of the LPO alone would not satisfy the element of mens rea for the offence under the charges preferred (see pp 527I–528B); *Wong Voon @ David Wang Chang Vun v Public Prosecutor* (1984) Kota Kinabalu Criminal Appeal No 24 of 1984 distinguished.

(2) There was a missing link of the evidence in respect of the procedural requirement in making purchases of goods for the Department whilst bearing in mind that it was in evidence of an existence of a monitoring system at that time. No one with some sound knowledge of the procedure in the purchases of goods for

the Department was called by the prosecution as a witness. That could have cleared the doubt of whether there was still a need to make any decision pertaining to selection of a supplier when there was already a standard price monitoring system set up with a view to enhance transparency. The evidence of the witnesses called albeit they were not the senior officers of the Department at that time indicated that the signing of the LPO was a matter of course with no element of decision making process (see p 528B–D).

(3) Since the trial court was in doubt on the factual evidence adduced by the prosecution relating to the mens rea for the offences as per charges, there was no reason for an appellate court to interfere. More so, in this case when there was no strong assertion that the factual conclusions of the trial court was grossly erroneous; *Mat v Public Prosecutor* [1963] MLJ 263 followed. It is also trite law that an appellate court should be slow to interfere with finding of fact of a trial court (see p 527E–F); *Lim Kheak Teong v Public Prosecutor* [1985] 1 MLJ 38 followed.

[Bahasa Malaysia summary

Responden adalah seorang pegawai awam dan pada setiap masa matan beliau adalah Pemangku Penolong Pengarah Utama di Bahagian Pengurusan Sumber Manusia di Pejabat Ketua Menteri, Kuching, Sarawak ('Jabatan tersebut'). Beliau telah dituduh dengan lima kesalahan melakukan amalan rasuah dengan menggunakan jawatan awam beliau untuk mendapatkan faedah bagi diri sendiri apabila beliau mengeluarkan pesanan belian tempatan ('PBT') kepada sebuah firma yang dimiliki sepenuhnya oleh anak perempuan beliau untuk bekalan peralatan komputer kepada Jabatan tersebut. Di akhir kes pihak pendakwa, hakim mahkamah sesyen yang bijaksana telah memanggil pembelaan responden atas pertuduhan-pertuduhan tersebut. Setelah mendengar responden, beliau telah dilepas dan dibebaskan. Pihak pendakwa telah membuat rayuan kepada Mahkamah Tinggi. Inti pati kes pihak pendakwa adalah bahawa dengan mengeluarkan PBT untuk setiap butiran yang disebutkan dalam pertuduhan-pertuduhan tersebut, responden berada dalam situasi di mana beliau mempunyai kepentingan yang bertentangan di mana beliau telah menyalahgunakan kedudukan beliau dan oleh itu telah melakukan kesalahan-kesalahan yang berbeza di bawah s 2(1) Ordinan Darurat (Kuasa-Kuasa Perlu) No 22 tahun 1970 ('Ordinan tersebut').

Diputuskan, menolak rayuan tersebut:

(1) Berkaitan tandatangan PBT tersebut, tiada keterangan telah dikemukakan untuk menunjukkan bahawa meskipun tandatangan tersebut adalah selepas penghantaran barangan yang dibeli, ia adalah satu kesalahan di bawah Ordinan tersebut.

Dalam keterangan dinyatakan bahawa responden hanya menandantangani PBT tersebut selepas Jabatan tersebut menerima kesemua atau sekurang-kurangnya beberapa butiran yang telah dipesan. Justeru itu, ia dapat dijustifikasikan oleh hakim mahkamah sesyen untuk mengatakan bahawa adalah mungkin keputusan untuk membeli barangan dibuat oleh orang atau beberapa orang lain dan tidak semestinya responden. Oleh itu berdasarkan fakta-fakta kes ini, dengan hanya menurunkan tandatangan ke atas PBT tersebut tidak dapat memenuhi elemen mens rea untuk kesalahan-kesalahan dalam pertuduhan-pertuduhan yang dibuat (lihat ms 527I–528B); *Wong Voon @ David Wang Chang Vun v Public Prosecutor* (1984) Kota Kinabalu Criminal Appeal No 24 of 1984 dibeza.

(2) Terdapat rentetan keterangan yang hilang berhubung keperluan prosedur dalam membuat pembelian barangan untuk Jabatan tersebut. Adalah mesti diingat bahawa pada masa itu telah ada satu sistem pemantauan. Tiada seorang dengan pengetahuan yang kukuh tentang prosedur pembelian barangan untuk Jabatan tersebut telah dipanggil oleh pihak pendakwa sebagai saksi. Itu mungkin dapat melenyapkan keraguan tentang sama ada masih perlunya untuk membuat apa-apa keputusan berhubung pemilihan pembekal apabila sudah ada harga tetap yang bertujuan untuk menambahkan ketelusan. Keterangan saksi-saksi yang dipanggil meskipun mereka bukan pegawai-pegawai kanan Jabatan tersebut pada masa itu menunjukkan bahawa menandatangani PBT tersebut adalah satu kelaziman tanpa ada elemen proses membuat keputusan (lihat ms 528B–D).

(3) Memandangkan mahkamah perbicaraan meragui keterangan fakta yang dikemukakan oleh pihak pendakwa berkaitan mens rea untuk kesalahan-kesalahan sebagaimana yang dipertuduhkan, tidak terdapat apa-apa sebab untuk mahkamah rayuan campur tangan. Tambahan lagi, di dalam kes ini, tidak terdapat penegasan yang kukuh bahawa kesimpulan-kesimpulan fakta memang salah; *Mat v Public Prosecutor* [1963] MLJ 263 diikut. Ia juga undang-undang tetap bahawa satu mahkamah rayuan harus cuba untuk tidak campur tangan dengan penemuan fakta satu mahkamah perbicaraan (lihat ms 527E–F); *Lim Kheak Teong v Public Prosecutor* [1985] 1 MLJ 38 diikut.]

Notes

For cases on Emergency (Essential Powers) Ordinance s 2, see 4 *Mallal's Digest* (4th Ed, 2000 Reissue) para 406.

Cases referred to

Lim Kheak Teong v PP [1985] 1 MLJ 38 (folld)
Mat v PP [1963] MLJ 263 (folld)

Wong Voon @ David Wang Chang Vun v PP (1984) Kota Kinabalu Criminal Appeal No 24 of 1984 (distd) A

Legislation referred to

Emergency (Essential Powers) Ordinance No 22 of 1970 s 2(1)
Public Officers (Conduct and Discipline) Regulations 1971 (State of Sabah) reg 3 B
Sarawak State General Order O 153(4)(a)

Saiful Idris bin Zainuddin (Deputy Public Prosecutor, Anti Corruption Agency) for the appellant.
Anthony Tai (*Anthony Tai*) for the respondent. C

Richard Malanjum J: On 8 July 2002, I dismissed the appeal by the prosecution (the appellant in this case) against the decision of the learned sessions court judge in Kuching acquitting the respondent on five charges punishable under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970 ('the Ordinance'). I indicated that I would give my reasons in the event of further appeal. As there is now a notice of appeal lodged by the appellant, this is therefore my reasons. D

The charges against the respondent were as follows:

First charge: E

> That you, on 8 August 1997 at the office of Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, Kuching, in the District of Kuching, in the State of Sarawak, being a public officer, namely Pemangku Ketua Penolong Pengarah, Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, whilst being such officer committed corrupt practice by using your public office for your advantage, in that you have issued Local Purchase Order A No 750303, F
> to a firm wholly owned by your daughter, Kon Siew Ping, namely Kua Agency, for the supply of computer accessories, namely, two boxes of HP Laser Jet Toner Cartridge C3900A and two boxes of HP Laser Jet Toner Cartridge 92298A costing RM1,900 to Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, and that you have thereby committed as offence punishable under s 2(1) of the Emergency G
> (Essential Powers) Ordinance No 22 of 1970.

Second charge:

> That you, on 21 November 1997 at the office of Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, Kuching, in the District of Kuching, in the State of Sarawak, being a public officer, H
> namely Pemangku Ketua Penolong Pengarah, Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, whilst being such officer committed corrupt practice by using your public office for your advantage, in that you have issued Local Purchase Order A No 847725,
> to a firm wholly owned by your daughter, Kon Siew Ping, namely Kua Agency, for the supply of computer accessories, namely, three units HP Laser Jet Toner 4/4M-92298A, three units of HP Series II/III Toner-9 I
> 229 5A, 20 units of 3M DDS-90 and ten units of Sony DG 90M costing RM3,840 to Bahagian Pengurusan Sumber Manusia, Jabatan Ketua

Menteri Sarawak, and that you have thereby committed as offence punishable under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970.

Third charge:

That you, on 19 December 1997 at the office of Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, Kuching, in the District of Kuching, in the State of Sarawak, being a public officer, namely Pemangku Ketua Penolong Pengarah, Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, whilst being such officer committed corrupt practice by using your public office for your advantage, in that you have issued Local Purchase Order A No 847775, to a firm wholly owned by your daughter, Kon Siew Ping, namely Kua Agency, for the supply of computer accessories, namely, 4 units of HP 3900A Toner, 20 boxes of 3M DDS-90, 20 boxes of Sony DG 90M, 25 boxes of Kodak CDR and four boxes of Verbatim CD-RW costing RM8,250 to Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, and that you have thereby committed as offence punishable under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970.

Fourth charge:

That you, on 26 December 1997 at the office of Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, Kuching, in the District of Kuching, in the State of Sarawak, being a public officer, namely Pemangku Ketua Penolong Pengarah, Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, whilst being such officer committed corrupt practice by using your public office for your advantage, in that you have issued Local Purchase Order A No 847819, to a firm wholly owned by your daughter, Kon Siew Ping, namely Kua Agency, for the supply of computer accessories, namely, 11 boxes of HP 92298A Toner and 11 boxes of HP 92295A Toner costing RM9,900 to Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, and that you have thereby committed as offence punishable under s 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970.

Fifth charge:

That you, on the 30th December 1997 at the office of Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, Kuching, in the District of Kuching, in the State of Sarawak, being a public officer, namely Pemangku Ketua Penolong Pengarah, Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, whilst being such officer committed corrupt practice by using your public office for your advantage, in that you have issued Local Purchase Order A No. 847821, to a firm wholly owned by your daughter, Kon Siew Ping, namely Kua Agency, for the supply of computer accessories, namely, eight boxes of HP 3900A Toner costing RM5,280 to Bahagian Pengurusan Sumber Manusia, Jabatan Ketua Menteri Sarawak, and that you have thereby committed as offence punishable under Section 2(1) of the Emergency (Essential Powers) Ordinance No 22 of 1970.

There was no dispute on the following facts, namely, that the respondent was a public officer and at the material time he was the Acting Principal Assistant Director in the Human Resources Management Division of the

Chief Minister's Office, Kuching, Sarawak. It was also not in issue that the items mentioned in the charges were supplied to the Human Resources Management Division with the signatures of the respondent on the local purchase orders ('LPO') for those items. Further that Kua Agency was owned by one Kon Siew Ping, the daughter of the respondent was also not in dispute.

At the end of the prosecution case, the learned sessions court judge called for the defence of the respondent on those charges. Having heard the version of the respondent, he was discharged and acquitted.

The gist of the prosecution case was that in issuing the respective LPO for those items mentioned in the charges the respondent was in conflict of interest situation in that he had abused his position and thus committed distinct offences under the said Ordinance. The unreported case of *Wong Voon @ David Wang Chang Vun v Public Prosecutor* (1984) Kota Kinabalu Criminal Appeal No 24 of 1984 was one of the decided cases relied upon by the prosecuting officer to call for the conviction of the respondent. And in *Wong Voon*, the accused was the Director of the Welfare Department Sabah. There was a serious flood in the northern part of the State in December 1980. The State Welfare Ministry was therefore asked to bring immediate relief to the affected victims of the flood. To achieve the purpose quickly the State Finance Ministry gave authority to the Welfare Ministry to buy food supplies directly without going through the tender procedure so long as the prices were within the specified prices including sardines at RM1.50 per tin. In turn, the Welfare Ministry directed the various district offices affected by the flood and the Welfare Department which was under the directorship of the accused to take all necessary arrangements for the supply of food to the victims of the flood. On 3 January 1981, the accused wrote a letter to the Permanent Secretary of the Welfare Ministry informing the latter of the names of the suppliers willing to do the supplies. One of them was Momboh Enterprise in which the wife of the accused had interest therein. There was a reply from the Ministry which was taken by the accused as authorizing him to purchase from Momboh. As a result, the accused proceeded to issue and sign four purchase orders to Momboh. Incidentally, that firm was involved in the supply of spare parts as one of its businesses.

One week after the issuing of the purchase orders, four payment bills date 16 January 1981 came from Momboh. In response, the accused signed payment vouchers for those bills. The same were presented to the State Treasury for payments and which was duly done. Subsequently, the sums received found their ways into the bank accounts of that firm with the Hong Kong and Shangai Bank Kota Kinabalu which was earlier on opened by the accused and one other as the introducer. From there, the sums went into various payments for the benefit of the accused and some others connected to him. The sessions court convicted the accused. On appeal to the High Court, the main point raised was whether the accused abused his position when he signed and issued the purchase orders and the payment vouchers for the said firm.

There was no dispute on the actus reus aspect of the deeds. It was also accepted as a principle of law that mens rea for such an offence would be established by way of proof of breach of any statutory provision applicable. The learned judge found that the relevant statutory provision applicable was reg 3 of the Public Officers (Conduct and Discipline) Regulations 1971 (State of Sabah). And it was also found by the learned judge that there was an infringement of the said regulation despite the letter to the Permanent Secretary of the Welfare Ministry. To avoid any semblance of conflict of interest it was propounded by the learned judge that the accused should have done two things, namely, to declare his interest and to disqualify himself. It was his view that the decisions or the acts performed by the accused concerning the firm should have been done either by the Ministry or some other senior officials in the Ministry but not the accused. Thus, the learned judge found that the signing by the accused of the local purchase orders constituted an infringement of the regulation and hence had abused his position.

Reverting to the present case, it was the submission of learned counsel for the respondent that *Wong Voon* could be distinguished in that an infringement of procedure was found when the accused issued the local purchase orders. There was no similar allegation in the instant case.

It was also contended that the learned sessions court judge had taken all the evidence into consideration before coming to her decision to acquit the respondent.

Now in acquitting the respondent the learned sessions court judge, inter alia, said:

> At the prima facie stage, I did rule that a contravention of O 153(4)(a) of the State General Order provided the necessary mens rea for the offences facing the accused. I will now examine his defence to see if he had through the evidence of himself and his witnesses create any reasonable doubt that he had the guilty mind when signing all five LPOs, in other words whether the second ingredient of the offence as outlined in my written ruling had been proved beyond reasonable doubt.
>
> As was made clear by me in my written ruling, in respect of the first charge in Summons No SC-61-5-2001-III, no evidence was led as to the circumstances leading to the purchase of the goods stated in the relevant LPO, exh P7. The rest of the four LPOs in the four remaining charges, the circumstances were, if I may again repeat (in brief) from what I have said at p 46 of the notes of proceedings, ie PW5 said that the accused supplied her with a list of suppliers including Kua Agency's and that she on her part listed out the quotation from these suppliers on the said list and the accused then chose Kua Agency over and above the other suppliers. The said lists of suppliers were missing and not evidence before me. In this regard I do not think it can be disputed, as the evidence from both the prosecution and the defence amply bore the fact, that the prices charged by Kua Agency for the goods supplied were fair and reasonable. It was also a fact proven, even by the prosecution witnesses that Kua Agency was a reliable supplier who was prompt in its delivery. What varies was, firstly, the evidence of PW4 who said that all purchases except that from the account section, must be made with the accused's permission even though he agreed in cross-examination that the

accused did not decide on what items to purchase or when these items were required and that the purchase would be left to the user of the goods. Secondly, PW5's evidence was also along the same line and additionally she also mentioned the lists of suppliers in all the four cases from which the accused picked Kua Agency. She had also admitted in her cross-examination that the other suppliers on the said list had problems supplying the goods ordered by her. Likewise PW12 evidence was that all purchases must get the approval of either the accused or the other two warrant holders but also in cross-examination he said that if the funds were available and the method of purchase was proper the accused had no decision to make but sign the vouchers.

...

For the culpable intent in this case before me the existence of the quotation lists as testified by PW5 assumed great importance because as stated by PW5 she submitted the lists with the quotations to the accused who then made the selection of Kua Agency in all four instances. The lists as I said, were not produced. On top of that the Department has in place a price monitoring system which PW12 confirmed was to give transparency to the purchases made by the Department and which the defence witnesses said provides all the relevant information on the suppliers and the prices for the goods they ordered. In the face of these evidence, I failed to see why PW5 needed to have the list of suppliers and why, more importantly, she needed to call each and everyone of the suppliers on the so-called list to find out the prices for the goods stated in the four LPOs.

...

Viewed against the facts as I stated earlier that the said lists were not produced and given their significance in this case, the existence of the price monitoring system accessible to PW5 and there being no requirement for a quotation exercise (no matter that it was not a formal one as stipulated by the Treasury instructions) I find that PW5 incriminating evidence against the accused must be viewed with suspicions and deemed unreliable for the purposes of sustaining a conviction against the accused.

Based on the above considerations, it is also possible that the choice of Kua Agency was that of PW5 in the four instances or that of some unidentified person in the other instance, thus making the defence argument tenable that the accused's role on the five purchases was, merely to verify the purchases made and not strictly to approve them. It must be remembered that PW12 himself has testified that if funds were available and the method of purchase was proper, the accused had no decision to make but sign the vouchers and it was not disputed in the trial that funds were available nor was there any doubt that the Treasury instructions in respect of purchase below RM10,000 was complied with. In this regard, the evidence of the witnesses (both prosecution and defence) testifying to the reliability of Kua Agency as a supplier to the goods ordered would also be of some significance. I would therefore hold that the accused had succeeded in raising a reasonable doubt that he had the required mens rea for the commission of the five offences for which he was charged.

As for the accused's failure to declare his interest and to disqualify himself, given that his direct involvement in the five purchases was doubtful and viewed against his role as a verifier of the goods purchased, which goods, said PW4, PW5 and DW2 would have been delivered to the Department before the accused signed the five LPOs, such failure is to my mind not fatal

A in the circumstances of his case.

> Accordingly, I find that the prosecution has failed to prove the second ingredient of the charges beyond reasonable doubt, ie that the accused had abused his position as a public servant for his pecuniary or other advantages as required by s 2(1) of the Ordinance in respect of each and everyone of the five charges and I would therefore discharge and acquit him of the same.

B In my oral judgment, I said this:

> Having heard learned DPP and the learned counsel for the respondent and having considered the materials before me, I am of the view that the finding of facts by the trial court requires no interference by this court. Further, there appears to be a gap in the evidence adduced by the prosecution pertaining to
C the signing of the local purchase order. As such, I dismiss this appeal and affirm the decision of the trial court.

From the excerpts of the judgment of the learned sessions court judge, it is obvious that in totality of the evidence before the court, she was not convinced with the evidence of the main witness for the prosecution, that is,
D PW5, Madam Goh Swee Ping. As for the other material witnesses such as PW4, En Sidek bin Hj Ahmad and PW12, Tn Hj Zakaria bin Abdullah, the learned sessions court judge was also in doubt as to reliability of their version that the respondent had the responsibility to make a decision as to which supplier to order the goods from. That was because it was the common answer of these witnesses during cross-examination that if there
E were funds available for the purchase of goods required by the division then there was no necessity for a decision to purchase to be made.

Since the trial court was in doubt on the factual evidence adduced by the prosecution relating to the mens rea for the offences as per charges, I did not think there was any reason for an appellate court to interfere. More so,
F in this case when there was no strong assertion that the factual conclusions of the trial court was grossly erroneous (see *Mat v Public Prosecutor* [1963] MLJ 263). And of course, it is not to be overlooked that it is trite law that an appellate court should be slow to interfere with finding of fact of a trial court. Such principle has been succinctly stated by his Lordship Hashim Yeop Sani FJ (as he then was) in the case of *Lim Kheak Teong v Public*
G *Prosecutor* [1985] 1 MLJ 38 where he said this at p 40:

> With respect, what Lord Russell of Killowen said in Sheo Swarup [*Sheo Swarup v King-Emperor* AIR 1934 PC 227, 230] was that although no limitations should be placed on the power of the appellate court, in exercising the power conferred 'the High Court should and will always give proper
H weight and consideration to such matters' as—
>
> (1) the views of the trial judge on the credibility of the witnesses;
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> (2) the presumption of innocence in favor of the accused;
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> (3) the right of the accused to the benefit of any doubt; and
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> (4) the slowness of an appellate court in disturbing a finding of fact arrived
I at by a judge who had the advantage of seeing the witnesses.

As regards the signing of the LPO, there was also no evidence adduced or legal submission made indicating that notwithstanding the signing was after

the delivery of the goods purchased, it was nevertheless an offence under the Ordinance. And it was in evidence that the respondent only signed the LPO after the department received or at least some of them of the items ordered. Hence, it was quite justified for the trial sessions court judge to say that it was possible that the decision to purchase the goods from Kua Agency could have been made by some other person or persons and not necessarily the respondent. As such, on the facts of this case, the signing of the LPO alone would not satisfy the element of mens rea for the offence under the charges preferred.

There was also a missing link in my view of the evidence in respect of the procedural requirement in making purchases of goods for the division whilst bearing in mind that it was in evidence of an existence of a monitoring system at that time. No one with some sound knowledge of the procedure in the purchases of goods for the division was called by the prosecution as a witness. That could have cleared the doubt of whether there was still a need to make any decision pertaining to selection of a supplier when there was already a standard price monitoring system set up with a view to enhance transparency. The evidence of the witnesses called albeit they were not the senior officers of the division at that time indicated that the signing of the LPO was a matter of course with no element of decision making process. That again would defeat any assertion of mens rea arising from the signing of the said documents vis-a-vis O 153(4)(a) of the Sarawak State General Order.

I do not think this case should be taken as being all fours with the case of Wong Voon. In that case, it was not in dispute that the accused issued the LPO before the supply of the goods. It was also obvious that there was a decision making role of the accused when he had to select the suppliers. Thus, heavy reliance by the prosecution on that case was quite perilous to its case.

Accordingly, for the above reasons that I dismissed the appeal by the prosecution against the decision of the learned sessions court judge to discharge and acquit the respondent of the five charges.

Appeal dismissed.

Reported by Peter Ling